



Your ref: S0433 PAC33

22<sup>nd</sup> June 2021

Mr Martin Hughes  
Clerk to the Public Accounts Committee  
Leinster House  
Dublin 2  
D02 XR20

Dear Mr Hughes

I refer to your letter of 15 June 2021 on behalf of the Public Accounts Committee concerning correspondence the Committee has had with a number of Government Departments in relation to the obligations on public bodies under the Protected Disclosures Act 2014 ("the 2014 Act") to publish an annual report of the number of protected disclosures made to them. In this regard, I hope that the Committee will find the following information of assistance:

#### **Requirements of the 2014 Act**

Section 22 of the 2014 Act provides that every public body shall prepare and publish not later than 30 June in each year a report in relation to the immediately preceding year, in a form that does not enable the identification of reporting persons, containing information relating to: the number of protected disclosures made to the public body; the action (if any) taken by the public body in response to those protected disclosures; and such other information relating to those protected disclosures and the action taken as may be requested by the Minister for Public Expenditure & Reform from time to time.

I can confirm that, as the Secretary General of the Department of Finance has advised in his letter to the Committee of 11 May 2021, my Department has advised that a separate annual report for protected disclosures is normally required, not just inclusion of the information in the public body's annual report. This is based on informal advice provided by the Office of the Attorney General regarding the interpretation of section 22 of the Act. We have also advised that public bodies who receive no disclosures or only a low number of disclosures can publish this information on their websites, so as to minimise the compliance burden on them. Public bodies that do not receive any protected disclosures in a given year are still required to publish a report stating that no disclosures were made.

## **Compliance with the reporting requirements under the 2014 Act**

The 2014 Act does not provide for a role for my Department or any other public body to monitor compliance with the obligation to publish an annual report on protected disclosures. However, in the context of the work my Department has been doing recently in: (a) reviewing and updating the list of bodies prescribed to receive protected disclosures under section 7 of the 2014 Act; and (b) reviewing the operation of the 2014 Act in the context of the preparations for the transposition of the EU Whistleblowing Directive, we have collated some information on the numbers of protected disclosures made using the available information in those annual reports that have been published. In this regard, based on the information the Department has collected itself, I agree with the Committee's conclusion that compliance with section 22 of the Act is in need of improvement.

My Department has taken a number of actions in this regard. In the wake of the review and update of the list of prescribed bodies (SI 367 of 2020, signed by the Minister for Public Expenditure & Reform on 24 September 2020), my Department wrote to all prescribed persons informing them of the new SI and also reminding them of their obligations to prepare an annual report under section 22 of the 2014 Act. Prescribed bodies were reminded again of their reporting obligations at an online seminar held by my Department on 6 November 2020 on preparing for the EU Whistleblowing Directive.

Protected disclosures annual reports for 2020 must be published by 30 June this year. My Department will carry out an exercise in July to see if our efforts have had any effect on compliance rates.

## **Forthcoming changes to the reporting requirements under the 2014 Act**

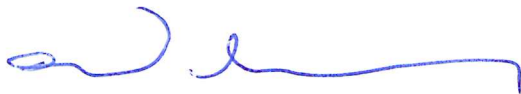
Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law ("the Whistleblowing Directive") must be transposed into Irish law by 17 December 2021. This will require amendments to the 2014 Act. To this end, on 12 May, Government approved the general scheme of a Protected Disclosures (Amendment) Bill to give effect to the Directive. A copy of the general scheme is attached for reference. The general scheme has been referred to the Joint Committee on Finance, Public Expenditure and Reform and Taoiseach for pre-legislative scrutiny.

I would like to draw the Committee's attention to Head 26 of the general scheme, which provides for substantial amendments to section 22 of the 2014 Act concerning reporting. This provision is intended to give effect to the reporting requirements set out in the Directive and also to clarify the requirements as regards reporting generally under the Act. It requires that public bodies report not only on the numbers of protected disclosures received but also what sections of the Act the disclosures were made under; the number of investigations or other proceedings initiated and their outcome; the estimated financial damage and amounts recovered (where relevant); and any other information the Minister for Public Expenditure & Reform may specify. The Head also provides that public bodies may publish this information in their annual report. Most importantly, it also requires that all reports be sent to the

Minister for Public Expenditure & Reform for collation and onward transmission of relevant information to the European Commission. I believe this provision, in particular, will ensure greater compliance with this obligation going forward.

I trust the above information is of assistance to the Committee.

Yours sincerely

A handwritten signature in blue ink, consisting of a series of loops and a long horizontal stroke.

David Moloney  
Acting Secretary General